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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re V.M., a Person Coming Under the Juvenile Court Law.	
SAN DIEGO COUNTY HEALTH AND HUMAN SERVICES AGENCY, Plaintiff and Respondent, v. Y.M., Defendant and Appellant.	D066465 (Super. Ct. No. NJ13928B)

APPEAL from orders of the Superior Court of San Diego County, Kimberlee A. Lagotta, Judge. Affirmed.

Neil R. Trop, under appointment by the Court of Appeal, for Defendant and Appellant.

Thomas E. Montgomery, County Counsel, John E. Philips, Chief Deputy County Counsel, and Patrice Plattner-Grainger, Deputy County Counsel, for Plaintiff and Respondent.

The 12-year-old dependent child who is the subject of this appeal, V.M., has been in the care of her maternal grandparents for almost half of her life; her older half sister, M.S., has also been cared for by the grandparents for substantial periods. The child's mother, defendant and appellant Y.M. (mother), has been unable to care for either V.M. or M.S. because of her continuing methamphetamine and alcohol addictions. V.M.'s grandparents would like to adopt V.M., and V.M. would like to be adopted by them. For the reasons we set forth below, we affirm the juvenile court's orders adopting a permanent plan of adoption for V.M. and terminating mother's parental rights.

FACTUAL AND PROCEDURAL BACKGROUND

V.M. was born on December 18, 2002. At the time of V.M.'s birth, M.S. was almost five years old.

By 2008, V.M.'s father was incarcerated after being convicted of molesting M.S., and M.S. had been placed in the care of the sisters' maternal grandparents. In July 2008, plaintiff and respondent San Diego County Health and Human Services Agency (the Agency) filed a petition which alleged V.M. was a dependent by virtue of the fact that mother's methamphetamine addiction prevented mother from providing V.M. with adequate parental care. The trial court sustained the Agency's petition, placed V.M. in the care of her maternal grandparents, and order reunification services. During the course of reunification, mother conceded she has been abusing both methamphetamine and

alcohol for a substantial part of her life.

On December 8, 2009, the trial court returned V.M. to mother's care. However, because mother was unable to maintain her sobriety and the Agency had received reports that she had left then eight-year-old V.M. unattended, on February 17, 2011, the trial court ordered that V.M. again be detained with her maternal grandparents.

On June 15, 2011, the court ordered that V.M.'s maternal grandparents be made her guardians and that mother be provided reasonable visitation. Shortly thereafter, the court terminated jurisdiction over V.M.

In October 2013, the Agency filed a petition under Welfare and Institutions Code[1] section 388. The petition alleged V.M.'s maternal grandparents wanted to adopt her and that V.M. wanted to be adopted by them; accordingly, the petition asked that a new hearing be conducted under section 366.26. The trial court granted the section 388 petition and set a hearing under section 366.26.

The section 366.26 hearing was conducted on July 11, 2014. The Agency reported that although M.S. had been living with her mother, because of physical conflict between them, M.S. had moved out of her mother's house and was planning to move back into the maternal grandparents' home with V.M. The Agency also reported that although mother stated she had been sober for almost nine months, her postings on social media sites indicated that she had a new romantic relationship with someone who indulged in alcohol. A social worker observed visits V.M. had with mother at mother's home before

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1 All further statutory references are to the Welfare and Institutions Code.

mother's conflicts with M.S. were brought to the Agency's attention. During the visits, V.M. and her mother appeared to interact appropriately, although V.M. had no difficulty returning to her grandparents' home and continued to express her desire and expectation that she would be adopted.

The trial court found that V.M. was both generally adoptable and specifically adoptable by her grandparents and that none of the exceptions to the statutory preference for adoption applied; accordingly, the court terminated mother's parental rights and selected adoption as a permanent plan for V.M. Mother filed a timely notice of appeal.

DISCUSSION

I

In her first argument on appeal, mother contends the record will not support the trial court's findings that V.M. is adoptable within the meaning of section 366.26, subdivision (c)(1). As the Agency asserts, our review of the trial court's adoptability determinations is governed by the familiar substantial evidence standard. (See *In re B.D.* (2008) 159 Cal.App.4th 1218, 1232; *In re Josue G.* (2003) 106 Cal.App.4th 725, 732.) Thus, we review the record in the light most favorable to the trial court's order and draw all reasonable inferences in favor of the order, resolving all factual conflicts in favor of the Agency. (*In re D.M.* (2012) 205 Cal.App.4th 283, 291.)

The record here shows that not only were V.M.'s grandparents willing to adopt her but also that 23 approved families were interested in adopting a child with characteristics similar to V.M.'s. We agree with the Agency that this record fully supports the trial court's adoptability findings.

Although we agree with mother that V.M. made it clear that she very much preferred and expected to be adopted by her grandparents, her clear preference did not prevent the trial court from determining that she was also generally adoptable. In this regard, we note that mother's counsel conceded in the trial court that there was no evidence that V.M. would either accept or reject adoption by a nonrelative family in the event her grandparents were unable to adopt her or continue to act as her guardians. The absence of evidence V.M. would accept a nonrelative adoption is not evidence that she would reject it and hence did not prevent the trial court from finding that V.M. was generally adoptable.

What was of course more pertinent in this case was the trial court's finding that V.M. was *specifically* adoptable by her grandparents. That finding was supported by the grandparents' success in acting as V.M.'s guardian over a lengthy period of time, by their expressed desire to adopt her, by V.M.'s similar desire, and by the fact that nothing in the record suggested the grandparents would not be approved as adoptive parents. Admittedly, both grandparents had earlier difficulties with the law, but neither the grandmother's 20-year old DUI conviction nor the grandfather's 10-year old DUI and corporal punishment convictions were obstacles to their existing guardianship or likely adoption. The absence of an adoptive home study of the grandparents is not a legal impediment to adoption where, as here, the dependent child has been successfully placed in the prospective adoptive home for a lengthy period. (See *In re Brandon T.* (2008) 164 Cal.App.4th 1400, 1410.)

In short, the trial court's findings of adoptability were fully supported by the

record.

II

During the course of her investigation of V.M.'s suitability for adoption, the social worker assigned to V.M. spoke to her about her feelings about her mother and grandparents. Although V.M. expressed some sympathy for her mother and some understanding of her mother's opposition to her adoption, V.M. told the social worker she was not conflicted about choosing her grandparents over her mother: "'No but it's just emotional because of my mom. *The thing is I really don't know my mom though.* Now I am getting to know her. But it's still hard. I don't want her to be hurt.'" (Italics added.)

V.M.'s statement about her mother—and, in particular, the fact that she did not know mother—defeats mother's contention that the trial court abused its discretion in failing to find mother had a beneficial relationship with V.M. that justified an exception to the statutory preference for adoption as a permanent plan. (See § 366.26, subd. (c)(1)(B)(i).) As stated in the seminal case of *In re Autumn H.* (1994) 27 Cal.App.4th 567, 575: "'In the context of the dependency scheme prescribed by the Legislature, we interpret the 'benefit from continuing the [parent/child] relationship' exception to mean the relationship promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents. In other words, the court balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly

harmed, the preference for adoption is overcome and the natural parent's rights are not terminated.

"Interaction between natural parent and child will always confer some incidental benefit to the child. The significant attachment from child to parent results from the adult's attention to the child's needs for physical care, nourishment, comfort, affection and stimulation. (See Goldstein et al., Beyond the Best Interests of the Child (1973) p. 17.) The relationship arises from day-to-day interaction, companionship and shared experiences. (*Id*. at p. 19.) The exception applies only where the court finds regular visits and contact have continued or developed a significant, positive, emotional attachment from child to parent."

Because V.M. did not really know her mother, mother did not and cannot establish that severing her parental relationship will cause V.M. the grave harm required for application of the beneficial relationship exception.

III

Mother contends the trial court also abused its discretion in failing to find adoption would interfere with V.M.'s relationship with her half sister, M.S. (See § 366.26, subd. (c)(1)(B)(v).) V.M. and M.S. were living together with their grandparents at the time of the hearing, and the grandparents expressed their committment to maintaining the sibling relationship. In light of those circumstances, V.M.'s likely adoption by the grandparents was not such a threat to the sibling relationship that it outweighed the benefits to her of adoption. (See *In re L.Y.L.* (2002) 101 Cal.App.4th 942, 952-953.)

While a nonrelative adoption was technically permissible under the order

terminating mother's parental rights, and such a placement might interfere with V.M.'s relationship with M.S., the likelihood of such a nonrelative placement was not very great. Accordingly, in weighing the value of V.M.'s relationship with M.S. and the risk adoption would pose to that relationship, the trial court could properly consider the slim likelihood that V.M. would be placed with unrelated individuals and conclude the slight risk to the sibling relationship did not justify depriving V.M. of the opportunity to be adopted by her grandparents.

IV

Finally, mother argues the trial court erred when it suggested she had the burden of showing clear and convincing evidence that V.M.'s adoption would impair either a beneficial parental relationship described in section 366.26, subdivision (c)(1)(B)(i), or a sibling relationship that is the subject of section 366.26, subdivision (c)(1)(B)(v). Mother asserts that because the statutes do not expressly impose a higher burden of proof with respect to either exception, she was only required to establish the existence of one of the exceptions to adoption by a preponderance of the evidence. (See *In Cheryl H.* (1984) 153 Cal.App.3d 1098, 1112, fn. 9.)

There are two difficulties with this argument. First, mother did not raise the issue in the trial court and thus deprived the trial court of the opportunity to consider the issue and correct any error in its analysis of the record. Thus, mother waived her right to assert the issue on appeal. (See *In re A.B.* (2014) 225 Cal.App.4th 1358, 1366.) Second, as the Agency points out, the exceptions to adoption may be applied only in "exceptional circumstances." (See *In re Celine R.* (2003) 31 Cal.4th 45, 53.) The record here does not

show any exceptional parental relationship with mother or any likely threat to a sibling relationship with M.S. Thus, any error the trial court committed in discussing mother's burden of proof was not prejudicial under any harmless error standard of review. (See *Denny H. v. Superior Court* (2005) 131 Cal.App.4th 1501, 1514 [juvenile court's error harmless unless reasonable probability of better result], but see *In re Mark A.* (2007) 156 Cal.App.4th 1124, 1145 [juvenile court error of constitutional dimension harmless only if no reasonable doubt judgment affected by error].)

DISPOSITION

The orders appealed from are affirmed.

BENKE, Acting P. J.

WE CONCUR:

O'ROURKE, J.

AARON, J.